U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12335050

Date: AUG. 06, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a senior application engineer and researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the proposed endeavor was of national importance or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing

[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).
[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The record indicates that the Beneficiary qualifies as a member of the professions holding an advanced degree.[4] The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not established the Beneficiary's eligibility for a national interest waiver under the analytical framework set forth in Dhanasar.

In Part 6 of the Form I-140, "Basic Information About the Proposed Employment," the Petitioner lists the Beneficiary's job title as "senior application engineer (researcher)." From the record, we understand that he currently works on a team "representing [redacted] Integrated Circuit (IC) Design Flow Solutions." The Petitioner stated that the Beneficiary will work in a research position in the field of science, technology, engineering, and mathematics (STEM) and that he is an expert in the field of [redacted] Systems. While the record describes the Beneficiary's past work in detail, the Petitioner offers little detail about the proposed endeavor. In other words, the Petitioner describes the proposed endeavor in terms of what the Beneficiary has already done, but it does not outline in specific detail any new projects the Beneficiary will undertake or any particular topic the Beneficiary intends to focus on within the various research areas. Nor does the Petitioner define how much of the Beneficiary's time will be devoted to research as opposed to other engineering duties, if any. Though not explicitly stated, it appears as though the Beneficiary will continue working in the fields in which he has already been working, which include "developing digital circuits for use in [] next generation communication systems." The Petitioner asserts that his work has broad application to a variety of industries and products including smartphones, medical devices, automated driving systems, and green energy.

The record includes letters of support from academics and other STEM practitioners in which they speak favorably about how the Beneficiary's past research has contributed to the field of [redacted] energy sources, which has the potential to make products more energy efficient. Though the authors of the numerous letters of recommendation discuss the nature of the work the Petitioner has performed in the past, they offer little specific information concerning the Beneficiary's prospective future endeavor. Notably, the Director issued a request for evidence (RFE), alerting the Petitioner to the need to establish the national importance of the Beneficiary's endeavor, with specific reference to

[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] The Beneficiary earned a master's degree in electrical engineering from a U.S. university in 2009 and earned a Ph.D. from the same university in 2013.

include a detailed description of the proposed endeavor, and an explanation as to why it is of national importance, supported by corroborative, documentary evidence.

As part of its RFE response, the Petitioner presented an article discussing the importance of STEM fields to the U.S. job market, in addition to a Congressional report on the importance of semiconductor manufacturing to the U.S. economy. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. Here, the Petitioner's reliance on the article and report to meet the first Dhanasar prong based is misplaced.

Regarding the first prong of the Dhanasar framework, the Director concluded that the Petitioner submitted insufficient evidence to establish that the Beneficiary's proposed endeavor has national importance, noting that simply obtaining employment in a worthy field or industry, such as electronic design and automation, does not warrant a national interest waiver. To the extent that the proposed endeavor has been sufficiently explained, we agree with the Director that it has substantial merit. However, for the reasons set forth below, the evidence is insufficient to show the endeavor's national importance.

On appeal, the Petitioner argues that the Director erred by failing to consider and properly weigh the evidence.[5] In support, the Petitioner points to the Beneficiary's research areas and their broad applications. Specifically, the Petitioner states that the Beneficiary's "proposed employment has national importance by virtue of its national and global implications within the area of [redacted] Systems and its direct link to the substantial positive economic effects of [the Petitioner]" (emphasis added). Initially, we note that this claim assigns to the Petitioner the primary economic benefit of the proposed endeavor. The Petitioner continues by stating that it is "one of the world's technology leaders in the [redacted] industry" and that its products serve "critical industries of [redacted] communications, computer, consumer electronics, semiconductor, networking, multimedia and transportation worldwide." The Petitioner asserts that the Beneficiary's work in this field has "tremendous implications for the future of technology in the U.S. and worldwide." In support, the Petitioner points to documentation describing itself as a company and the technologies that it develops. Here, the Petitioner appears to conflate its success, importance, or cutting-edge role within the world market with the national importance of the proposed endeavor. Although a relevant consideration, it does not follow that simply because the Beneficiary works for the Petitioner, his contributions will generate the same level of impact as an entire company.

The Petitioner also points out that the Beneficiary's research has been funded by the National Science Foundation (NSF). However, the record indicates that the Beneficiary conducted this nationally funded research while in school, under the auspices of a faculty member whose project was awarded the funding. While research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, the Petitioner has not offered

[5] While we may not discuss every piece of evidence individually, we have carefully reviewed and considered each one.

evidence that funding from NSF equates to national importance for the purposes of a national interest waiver. For instance, the Petitioner has not demonstrated that NSF funding is contingent upon a demonstration of the research's prospective impact.

Although the Petitioner mentions the Beneficiary's expertise, unique and high-level skill set, and his past success, this relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under Dhanasar's first prong.

The Petitioner asserts that much of the Beneficiary's research is conducted under strict confidentiality and proprietary rights agreements.[6] If so, the Petitioner has not adequately explained how the research will be known widely enough to have a broader impact rising to the level of national interest. The Petitioner has not demonstrated how proprietary and confidential research could have a national economic benefit.[7] The Petitioner suggests that because the Beneficiary's work will be incorporated into the Petitioner's proprietary products, which are then sold to individual consumers or industries, it will impact the U.S. and world economy substantially. However, the Petitioner does not offer a sufficiently direct connection between the Beneficiary's research and the products that might be produced or released to the market. For instance, the Petitioner has not offered a proposed timeline for when the Beneficiary's research will be incorporated into products available on the market, which products will be released, whether the Beneficiary's research is a major or minor feature within the overall product, or how the sale of the products will accrue benefit to the nation, as opposed to the Petitioner and its customers. By the Petitioner's logic, any engineer researching in the STEM field, whose work has the potential to be incorporated into consumer products that will eventually benefit the nation in an undefined timeline and in an undefined way, would qualify under this prong of Dhanasar. We disagree. The Petitioner must establish a more direct connection between the proposed endeavor and the broader implications of it.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. The nebulous nature of the Beneficiary's proposed future research does not sufficiently demonstrate how it would impact the STEM field and economy more broadly, as opposed to being limited to the Petitioner and its customers. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's research does not meet the "national importance" element of the first prong of the Dhanasar framework. Similarly, in Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893.

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[6] The Petitioner has stated this as one of the reasons why the Beneficiary's research has garnered a limited number of citations.

[7] Similarly, with regard to the Petitioner's claims of improving education and training programs as part of its argument under the third prong of Dhanasar, we determine that the Petitioner has not shown that the Beneficiary will offer original academic innovations to advance the industry through his endeavor. If the research is proprietary and confidential, then it is not apparent how it will reach education and training programs beyond the programs within the petitioning organization. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

In the totality, the Petitioner has not demonstrated that the specific endeavor the Beneficiary proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of the Beneficiary's proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated the Beneficiary's eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.[8]

III. CONCLUSION

The Petitioner has demonstrated that the Beneficiary qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act. However, as the Petitioner has not met the requisite first prong set forth in the Dhanasar analytical framework, we conclude that the Petitioner has not established the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Skirball Cultural Ctr., 25 I&N Dec. at 806. Here, that burden has not been met.

ORDER: The appeal is dismissed.

[8] Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's eligibility under the third prong of Dhanasar. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).